Commercial Cartage Corporation and Eugene B. Straley *and* Local 299, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Cases 7-CA-20692, 7-CA-20969, and 7-CA-21257

22 February 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS ZIMMERMAN AND HUNTER

On 30 August 1983 Administrative Law Judge Benjamin Schlesinger issued the attached decision. The General Counsel filed exceptions and a supporting brief, and the Respondent filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Commercial Cartage Corporation, Taylor, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the Order, except that the attached notice is substituted for that of the administrative law judge.

[1] The judge inadvertently omitted from his decision the admission of Respondent Commercial Cartage Corporation (Respondent Commercial) that it is a Michigan corporation with an office and place of business in Taylor, Michigan, where it is engaged in the transportation of freight by trucks, and that during the calendar year ending 31 December 1981, which period is representative of its operations during all times material hereto, Respondent Commercial, in the course and conduct of its operations, had gross revenues in excess of $500,000, of which in excess of $50,000 was derived from the transportation of freight and commodities from the State of Michigan directly to points outside the State of Michigan. Accordingly, we find, as Respondent Commercial admits, that Respondent Commercial is now, and has been at all times material herein, an employer engaged in commerce within the meaning of Sec. 2(2), (6), and (7) of the Act.

In the absence of exceptions thereto, the Board adopts, pro forma, the judge's findings that Respondent Commercial violated Sec. 8(a)(5) and (1) of the Act.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT fail and refuse to bargain with Local 299, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, with respect to wages, hours, and other terms and conditions of employment for the following unit which is appropriate for collective bargaining:

> All full-time and regular part-time truck drivers, helpers, dockmen, warehousemen, checkers, power-lift operators, hostlers, and such other employees as may be presently or hereafter represented by the Union, engaged in local pick-up delivery, and assembling of freight within the area located within the jurisdiction of the Local Union, not to exceed a radius of twenty-five (25) miles; but excluding all clerical employees, guards and supervisors as defined in the Act.

WE WILL NOT refuse to bargain collectively with the Union with respect to the effects upon our employees of our decision to close our operation.

WE WILL NOT fail and refuse to bargain collectively with the Union by refusing to furnish it with information that it requests which is relevant and reasonably necessary to the Union's performance of its duties on behalf of our employees in the administration of its collective-bargaining agreement.

WE WILL NOT fail and refuse to deduct dues from our employees' wages as required by the collective-bargaining agreement between us and the Union, and to remit same to the Union.

WE WILL NOT threaten that our facility will close if our employees do not accept a wage reduction.

WE WILL NOT threaten our employees that they would be considered voluntary quits if they did not accept a wage reduction.

WE WILL NOT bargain directly with our employees in the collective-bargaining unit described above and bypass the Union, the designated exclusive collective-bargaining representative of our employees.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them in Section 7 of the National Labor Relations Act.

WE WILL NOT rescind our unilateral changes of wages, hours, and other terms and conditions of employment—to wit, WE WILL rescind our reduc-

tion of the wages of our employees and our reduction of their vacation and sick pay benefits.

WE WILL comply with the terms and conditions of our collective-bargaining agreement with the Union.

WE WILL make whole our employees by paying them the remainder of their wages which we illegally reduced on 17 May 1982, with interest.

WE WILL make whole our employees by paying those employees who were laid off on 18 July 1982, 2 days after we terminated our operations, normal wages for a period specified by the National Labor Relations Board, plus interest.

WE WILL, upon request, bargain collectively with the Union with respect to the effects on our employees of our decision to terminate our operations and reduce to writing any agreement reached as a result of such bargaining.

WE WILL provide to the Union the following information: (1) whether or not we were engaged in our prior business; (2) whether we still had any equipment left with which we performed bargaining unit work and, if so, what equipment; (3) whether we sold, transferred, leased, or removed any of our equipment to any other company or entity and, if so, what equipment was involved and what method of transportation was used and to whom the equipment was transferred; (4) whether our affairs have been terminated and whether our assets have been distributed; (5) whether our business or customers have been transferred to Conjo Leasing, M-Bar Corp., Commercial Cartage Line Haul Division, and/or Inter-City Ltd. and, if so, what customers or businesses are involved; (6) whether Conjo Leasing, M-Bar Corp., Commercial Cartage Line Haul Division, and/or Inter-City Ltd. are performing any of the work or providing any of the services previously engaged in by our bargaining unit employees and, if so, what work and/or services are involved; (7) whether Eugene B. Straley has any relationship with Conjo Leasing and, if so, what type of relationship is involved; (8) whether Connie Springer has any relationship with Conjo Leasing and, if so, what relationship is involved; and (9) what relationship we have with Conjo Leasing, M-Bar Corp., Commercial Cartage Line Haul Division, and/or Inter-City Ltd.

WE WILL provide to the Union all records indicating any interest or relationship between Commercial and Conjo Leasing, M-Bar Corp., Commercial Cartage Line Haul Division, and/or Inter-City Ltd.

COMMERCIAL CARTAGE CORPORATION

DECISION

FINDINGS OF FACT AND CONCLUSIONS OF LAW

BENJAMIN SCHLESINGER, Administrative Law Judge: The National Master Freight Agreement covering over-the-road and local cartage employees of private common, contract, and local cartage carriers, including Commercial Cartage Company (Commercial or Respondent), expired on March 31, 1982. Previously, on February 8, 1982,[1] Commercial advised Charging Party Local 299, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Union), that it was withdrawing from multiemployer negotiations and that it desired to negotiate with the Union directly. On February 16, the Teamsters National Freight Industry Negotiating Committee advised Commercial that it had designated Charles Lester to act as chairman of a duly authorized subcommittee to negotiate amendments and changes to the National Master Freight Agreement with Commercial individually. Two weeks later, Eugene B. Straley, Commercial's sole officer, director, and stockholder, received a letter from the administrative assistant to the president and recording secretary of the Union, requesting that he submit his proposals to his designated chairman and "they will then attempt to set up a specific time and date for a meeting by and between yourself and Teamsters National Freight Industry Negotiating Committee/Authorized Sub-Committee."

Subsequently, about March 17,[2] Lester met with Straley, who explained some of his "needs" and showed him Commercial's profit-and-loss statement. At the conclusion of the meeting, Lester requested that Straley contact Jerry McDonald, the Union's business representative, who would better be able to reach agreement on the reduction of wages and some of the other benefits that Straley was hinting at. McDonald, however, was displeased that Lester, who was entrusted with negotiations, should parcel out work to McDonald that should rightfully have been performed by Lester. About a week later, Straley called Lester to complain that McDonald would not sit down to negotiate. Lester replied that he would talk to McDonald. Straley testified that frequently thereafter he asked McDonald to negotiate with him and discuss his "needs," but McDonald never agreed to do so. McDonald denied this, but it seems clear, in any event, that no negotiations took place thereafter.

The crux of the principal portion of the complaint herein involves Commercial's threat and ultimate unilateral action to impose its self-decreed reduction of wages and other benefits. Preliminarily, commencing in February, Commercial ceased deducting dues from its employees' paychecks, notwithstanding its obligation under the then subsisting collective-bargaining agreement to deduct dues from its employees' wages and transmit them to the Union. Straley stated to employee Archie Patterson that he was no longer associated with the Union, apparently

[1] All dates refer to 1982, unless otherwise stated.

[2] Straley testified that this meeting took place prior to his receipt of the second letter. However, in a letter dated May 24 he stated that he met with Lester on March 17.

believing that his withdrawal from multiemployer negotiations somehow insulated him from compliance with his contractual agreement.

Three months later, on May 14, Connie Springer, Commercial's office manager and an admitted supervisor, assembled the truck drivers and told them that she wanted to "see if she could come up with an agreement on . . . wages." She stated that Commercial's bookkeeper had ascertained that drivers were bringing in only enough business that the drivers should be paid $8.63 an hour, and that she had examined the same books and found that drivers were bringing in $9.50 an hour. She asked the drivers to accept a reduction of their wages from $12.94 per hour to one of the two other amounts. The drivers refused. Springer then said that she had to await a call from Straley but he had already said that, if the drivers did not accept a reduction, Commercial would close.

Patterson told Springer at the end of the meeting that the employees would report to work on Monday morning at their regular scale of $12.94, unless the employees received word that Commercial was closing. Not having received such information, the employees returned to work on the following Monday and continued to work until Friday, July 16, at the reduced rate of $9.50 per hour. However, on May 17, Straley stated that the workers were going to be paid only $8.63 per hour.[3] Patterson objected, to which Straley replied: "Well, if any drivers don't go along with the rate cut, I will consider them voluntary quits."

On May 18, after the wage reduction had already been put into effect and after the employees had been individually told of the reduction in their wages, for the first time, Commercial notified the Union of such changes. Straley's letter to McDonald stated as follows:

> Please be advised that we are in good faith barganing, [sic] submitting our needs for the next 12 months.
>
> An analysis of our cost and profit indicate that we will be able to pay an hourly rate of $8.63 per hour for actual time worked to our employees for this period of time. New employees will be paid at a rate of $6.00 per hour during the first six months of employment.
>
> We also are willing to offer two weeks vacation pay at forty hours each to those employees with three years seniority. Employees with less than three years seniority will be allowed one week vacation at twenty hours pay. We will offer three paid sick days during a 12 month period. All other provisions of the Master Freight Contract will apply.
>
> Due to the economic conditions, we are making this offer effective May 17, 1982.

In fact, rather than this letter being an offer, Commercial conceded that all of the reductions were put into effect as of May 17. The reduction of wages was actually effected; the offer relating to vacation pay and sick days represented a reduction of benefits, but because Commercial closed 2 months later no employee was adversely affected thereby. However, the letter clearly constitutes a threat to reduce those benefits. When McDonald received Straley's letter, he replied by letter dated May 20 that he objected to Commercial's reductions. The Union also filed an unfair labor practice charge in Case 7-CA-20692 the same day.[4] On May 21, Commercial confirmed, by hand-delivered letter to the individual employees, its "final offer" at the meeting of May 14, and that as of May 17 the hourly wage would be $9.50.

On Sunday, July 18, Straley decided to close Commercial's operation and so notified the employees by telegrams that day and by letters on July 19. The last day that Commercial transacted business was July 16. Commercial did not afford any opportunity to the Union to bargain about the effects of its decision to close, *First National Corp. v. NLRB*, 452 U.S. 666, 681-682 (1981); and, when the Union requested certain information on August 11 concerning the bona fides of the closure, Commercial refused to comply therewith.

Section 8(a)(5) of the Act requires that an employer bargain with the collective-bargaining representative of its employees pertaining to wages, hours, and other terms and conditions of employment. There is no question raised herein, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act and that it represents the following unit which is appropriate for collective bargaining:

> All full-time and regular part-time truck drivers, helpers, dockmen, warehousemen, checkers, powerlift operators, hostlers, and such other employees as may be presently or hereafter represented by the Union, engaged in local pick-up delivery, and assembling of freight within the area located within the jurisdiction of the Local Union, not to exceed a radius of twenty-five (25) miles; but excluding all clerical employees, guards and supervisors as defined in the Act.

It is also undisputed that "even after expiration of a collective bargaining contract, an employer is under an obligation to bargain with the Union before he may permissibly make any unilateral change *in those terms and conditions of employment comprising mandatory bargaining subjects within the meaning of § 8(d) of the Act.*" *Hen House Market No. 3 v. NLRB*, 428 F.2d 133, 137 (8th Cir. 1970). Of course, the bargaining obligation does not continue ad infinitum. Once the parties have reached an impasse, it is permissible for an employer to change terms and conditions of employment.

[3] Despite this threat and Straley's letter of May 18, infra, wages were reduced to $9.50 per hour.

[4] The charge was amended on June 14 and complaint thereon issued on June 22. The unfair labor practice charge in Case 7-CA-20969 was filed on July 23 and, on September 15, the Regional Director issued an order consolidating the cases and his amended complaint in both proceedings. The unfair labor practice charge in Case 7-CA-21257 was filed by the Union on October 4, and another order consolidating cases and a second amended complaint was issued on November 29. The latter charge was amended on December 21, and another order consolidating cases and a third amended complaint was issued on January 7, 1983. The hearing was held on June 23 and 24, 1983, in Detroit, Michigan.

Here, there was almost a total failure to bargain. At best, one meeting was held between Straley and Lester in which Straley indicated that he desired some concessions.[5] Those concessions, however, were never spelled out by him,[6] notwithstanding that the Union specifically requested Straley to supply his bargaining demands. Straley testified that he attempted to meet and negotiate with the Union, but all his requests were ignored. However, I do not credit his testimony generally, finding him evasive (he had difficulty identifying even his own signature) and his testimony highly inflated. I find that McDonald desired to negotiate with Straley, but Straley had indicated that bargaining would be performed for him by others, and no appointment was made to proceed with those negotiations. Furthermore, McDonald telephoned Straley on several occasions, but Straley purposefully avoided those calls. To the extent that McDonald on May 18 refused to negotiate, I credit his testimony that his refusal was based on Straley's discharge of Patterson that day. McDonald believed that Patterson had been discharged for protesting the reduced wages and based his refusal on the ground that Patterson was the union committeeman who was going to assist him in negotiations. The refusal to negotiate was quickly remedied by Straley's reinstatement of Patterson.

In these circumstances, Commercial violated the Act in numerous respects. It unlawfully and unilaterally changed the checkoff requirement of its contract. *Independent Stave Co.*, 248 NLRB 219 (1980). Without having negotiated at all with the Union and without having made its "needs" known, Springer met with employees for the purpose of reaching an agreement on their rates of pay and thus avoided dealing with Commercial's exclusive collective-bargaining agent, all in violation of Section 8(a)(5) and (1) of the Act. *D & H Mfg. Co.*, 239 NLRB 393, 403-404 (1978). At the same meeting, Springer threatened that if the employees did not accept the pay cut Commercial would close, a threat of reprisal to coerce Commercial's employees into reaching an accord with Commercial in derogation of the Union's status as collective-bargaining agent, in violation of the same subsections. *International Paper Co.*, 228 NLRB 1137 (1977). I make a similar finding and conclusion of law with respect to Straley's comment to Patterson on May 17 that if the employees did not accept the pay cuts they would be considered "voluntary quits."

However, I do not find that Straley's comment to McDonald and Patterson on May 18 that "you guys are going to break me—I can't afford you" is a threat. I find that statement to be a harmless opinion made to the union representatives, perhaps repeated by other employers in negotiations on literally thousands of occasions, to support their argument against increases or maintenance of wage rates.

There is no question that Respondent unilaterally reduced its employees' rate of pay and announced that sick leave and vacation pay would also be reduced, effective May 17, 1982. Without an impasse, that constitutes a unilateral change of wages and other terms and conditions of employment in circumvention of the duty to negotiate which frustrates the objectives of Section 8(a)(5). *NLRB v. Katz*, 369 U.S. 736, 743 (1962). In determining whether there is an impasse, the Board has held in *Taft Broadcasting Co.*, 163 NLRB 475, 478 (1967), enfd. sub nom. *Television Artists AFTRA*, 395 F.2d 622 (D.C. Cir. 1968), as follows:

> Whether a bargaining impasse exists is a matter of judgment. The bargaining history, the good faith of the parties in negotiations, the length of the negotiations, the importance of the issue or issues as to which there is disagreement, the contemporaneous understanding of the parties as to the state of negotiations are all relevant factors to be considered in deciding whether an impasse in bargaining existed.

Utilizing these factors, I find that Respondent was bound by collective-bargaining agreements with the Union from 1976 until 1982. Even with Commercial's withdrawal from multiemployer bargaining, there appears to be some indication that Commercial would have been willing to bargain in good faith provided that its "needs" were understood and agreed to. As noted, there was only one negotiating session with respect to Commercial's position, but Straley never indicated to the Union what his "needs" were. Obviously, the issue of wages was important to both parties, but Straley never gave negotiations a minimal chance of success because he never dealt personally with McDonald. Rather, he attempted to force his bargaining demands upon the employees by bypassing the Union and, first, threatening the employees and, second, unilaterally imposing the terms which he wanted to impose without bargaining.

I cannot find that there remained no "ray of hope with a real potentiality for agreement if explored in good faith in bargaining sessions." *NLRB v. Webb Furniture Corp.*, 366 F.2d 314, 316 (4th Cir. 1966). The ultimate question is whether further bargaining or, in this instance, any bargaining would have been futile, *Alsey Refractories Co.*, 215 NLRB 785 fn. 1 (1974); and an impasse is not reached by Straley's refusal to confer with McDonald and to give him Commercial's proposals. Expressed another way, there is no impasse where neither party "exhausted bargaining possibilities nor reached the stage where further meetings would have been fruitless." *NLRB v. Waycross Machine Shop*, 283 F.2d 733, 740 (5th Cir. 1960); *Television Artists AFTRA v. NLRB*, 395 F.2d 622, 628 (D.C. Cir. 1968); *Taft Broadcasting Co.*, supra at 478. Even if Straley were to be believed, his unilateral actions had no justification. He could have given the Union some prior notification of what he intended to do if faced with the Union's continuing refusal to negotiate. Straley did not do so. The unilateral changes violate Section 8(a)(5) and (1) of the Act.

[5] McDonald testified that Lester told him that Lester had met twice with Straley. Straley, who had a penchant for self-serving declarations, including testifying to helpful letters which he later could not find, stated that there was only one meeting. Surely, if there were more meetings, Straley would have freely admitted to them.

[6] Only on cross-examination did Straley testify that he mentioned to Lester the "eight dollar figure that our C.P.A. came up with." Lester did not testify. However, I have difficulty understanding why Straley would have mentioned this amount in March, 2 months prior to Springer's threats in May, and why Straley never pursued the matter until May if his accountant had given him such information prior to mid-March.

I have previously found that Commercial never bargained with the Union concerning the effects of the closure of its business on July 16, 1982. Board law requires such bargaining, and I find a violation of Section 8(a)(5) and (1) of the Act. In addition, on August 11, the Union requested certain information to be supplied to it which related to its contention that Straley, instead of closing Commercial's business, continued or diverted its business to other alleged alter ego enterprises controlled and dominated by Commercial. "There can be no question of the general obligation of an employer to provide information that is needed by the bargaining representative for the proper performance of its duties." *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 435-436 (1967).

In particular, I find the following requests for information were entirely appropriate and relevant, and it was a violation of Section 8(a)(5) and (1) for Respondent to refuse to provide: (1) whether or not Commercial was engaged in its prior business; (2) whether Commercial still had any equipment left with which it performed bargaining unit work and, if so, what equipment; (3) whether Commercial sold, transferred, leased, or removed any of its equipment to any other company or entity and, if so, what equipment was involved and what method of transportation was used and to whom the equipment was transferred; (4) whether the affairs of Commercial have been terminated and whether its assets have been distributed; (5) whether Commercial's business or customers have been transferred to Conjo Leasing, M-Bar Corp., Commercial Cartage Line Haul Division, and/or Inter-City Ltd. and, if so, what customers or businesses are involved; (6) whether Conjo Leasing, M-Bar Corp., Commercial Cartage Line Haul Division, and/or Inter-City Ltd. are performing any of the work or providing any of the services previously engaged in by Commercial's bargaining unit employees and, if so, what work and/or services are involved; (7) whether Straley has any relationship with Conjo Leasing and, if so, what type of relationship is involved; (8) whether Connie Springer has any relationship with Conjo Leasing and, if so, what relationship is involved; and (9) what relationship does Commercial have with Conjo Leasing, M-Bar Corp., Commercial Cartage Line Haul Division, and/or Inter-City Ltd.

Furthermore, the Union was entitled to obtain all records indicating any interest or relationship between Commercial and Conjo Leasing, M-Bar Corp, Commercial Cartage Line Haul Division, and/or Inter-City Ltd. The Union sought this information to ensure that the existing terms and conditions of employment were being maintained and to protect the interests of its bargaining unit employees. *NLRB v. Acme Industrial Co.*, supra; *Leonard B. Hebert, Jr., & Co.*, 259 NLRB 881 (1981), enfd. 696 F.2d 1120 (5th Cir. 1983).

The above information becomes particularly important and vital because of the fact that Straley has been named a respondent in this proceeding. The consolidated complaint alleges that Commercial and Straley were individual and joint employers, and at the hearing counsel for the General Counsel moved to amend the complaint to allege additionally that Commercial and Straley were alter egos. By inadvertence, the record does not reflect that I granted that motion; and, in the event that my own recollections are in error, I do so now.[7] The issue was fully litigated, and Straley has not been prejudiced thereby. However, I conclude that Straley is neither a joint employer with Commercial nor its alter ego and should not be bound by the order which I shall recommend herein.

There is no doubt that Straley is the sole officer, stockholder, and owner of Commercial and that he alone is responsible for the development of Commercial's labor policy and for negotiations with the Union. It was he who made the decision to reduce the wages of the union employees; it was he who circumvented the collective-bargaining process in order to implement the lower pay scale; and it was he who made the decision to close Commercial, as he had a right to do. *First National Corp. v. NLRB*, supra.

On the other hand, Straley did not close Commercial for "invalid reasons," nor is there any proof that Commercial closed in order to avoid and evade its obligations under the National Labor Relations Act. Additionally, there is no evidence that Straley engaged in either illegal or improper conduct with regard to his decision to close Commercial. It may be that when the Union obtains the information and records it requested in August it may be able to make a case against Straley, individually, but there is no relationship demonstrated at this time which shows that the closing of Commercial was anything but bona fide.

In *Riley Aeronautics Corp.*, 178 NLRB 495, 501 (1969), the Board adopted the statement of Trial Examiner Samuel M. Singer, who wrote:

> [T]he corporate veil will be pierced whenever it is employed to perpetuate fraud, evade existing obligations, or circumvent a statute. . . . Thus, in the field of labor relations, the courts and Board have looked beyond organizational form where an individual or corporate employer was no more than an *alter ego* or a "disguised continuance of the old employer" . . . or was in active concert or participation in a scheme or plan of evasion . . . or siphoned off assets for the purpose of rendering insolvent and frustrating a monetary obligation such as backpay . . . or so integrated or intermingled his assets and affairs that "no distinct corporate lines are maintained."

See also *Chef Nathan Sez Eat Here, Inc.*, 201 NLRB 343 (1973), enfd. 434 F.2d 126 (3d Cir. 1970); *Metropolitan Bureau of Investigation*, 246 NLRB 544 (1979); *Master Food Services*, 262 NLRB 804, 812 (1982); *Campo Slacks, Inc.*, 266 NLRB 492 fn. 1 (1983).

This quotation was cited with approval in *Concrete Mfg. Co.*, 262 NLRB 727 (1982), in support of a finding of personal liability where two representatives, knowing that their corporation owed backpay to certain discriminatees under a Board decision, converted corporate assets to their own use. See also *Carpet City Mechanical Co.*,

[7] Respondent's counsel was aware that I had granted the motion to amend.

244 NLRB 1031 (1979), where the sole owner and stockholder had knowledge of pending unfair labor practices, yet filed dissolution papers disclaiming the existence of any pending lawsuits. Similarly, personal liability has been imposed where the owner and chief operating officer of one employer closes it and commences doing business in the name of a new entity to avoid the effects of the Act or of labor contracts. *Ski Craft Sales Corp.*, 237 NLRB 122 (1978); *G & M Lath & Plaster Co.*, 252 NLRB 969 (1980), enfd. 670 F.2d 550 (5th Cir. 1982); *D & I Trucking*, 237 NLRB 55 (1978).

The General Counsel cites *Ogle Protection Service*, 149 NLRB 545, 546 fn. 1 (1964), enfd. in relevant part 375 F.2d 497 (6th Cir. 1967),[8] to support his position that Straley, being the sole officer and owner and the sole person who made the decision to close Commercial, must be held to be the alter ego of Commercial. In *Ogle*, the Board made no finding of fraud or deceit or disguised continuance or integration of assets, elements which I conclude are almost always part and parcel of an alter ego relationship. *G & C Construction Corp.*, JD-517-82. However, in *Ogle*, the Board specifically noted that no exceptions had been filed to the trial examiner's finding of an alter ego relationship. Furthermore, in *Ogle*, both the Board and the trial examiner cited as sole authority for their conclusions two Board decisions (*Industrial Fabricating, Inc.*, 119 NLRB 162 (1957); *National Garment Co.*, 69 NLRB 1208 (1946), enfd. 166 F.2d 233 (8th Cir. 1948), cert. denied 334 U.S. 845 (1948)), in which the individuals found personally liable had established businesses to divert work or siphon assets from entities bound by collective-bargaining agreements.

In light of the latter authorities cited above, I conclude that *Ogle* must be read to conform to the *Riley* test. If this were not the case, personal liability could be ascribed to any corporate officers or stockholders who made the legitimate decision to close their business and would defeat one of the principal purposes of creating corporations—to shield stockholders from the debts and obligations of the corporation. *NLRB v. Deena Artware*, 361 U.S. 398, 402–403 (1960). That a closed corporation loses money, has insufficient assets to pay its obligations, and ceases to operate is insufficient to impose personal liability. I will dismiss the complaint insofar as it alleges that Straley violated the Act.

By virtue of the foregoing, I conclude that Commercial violated Section 8(a)(5) and (1) of the Act. Commercial's activities set forth herein, occurring in connection with its operations described herein, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

THE REMEDY

Having found that Commercial has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, I shall recommend that it cease and desist therefrom. I shall also recommend that Commercial rescind its reduction of wages and vacation and sick leave benefits and rescind its action whereby it refused to deduct dues from the wages of its employees. Furthermore, I will recommend that Commercial be ordered to make whole all of its employees for any loss of pay or benefits which they may have suffered as a result of Commercial's unilateral actions by payment to them of the amounts of the reduction in wages from May 17 to July 16, 1982, with interest thereon to be computed in the manner prescribed in *Florida Steel Corp.*, 231 NLRB 651 (1977).[9] Furthermore, I shall require Commercial to produce the information and documents listed supra.

Having found that Commercial failed to afford the Union an opportunity to bargain about the effects of its closing on bargaining unit employees in violation of Section 8(a)(5) and (1) of the Act, I shall order the relief authorized by *Merryweather Optical Co.*, 240 NLRB 1213 (1979), as follows: I shall order Commercial to bargain with the Union, upon request, about the effects on bargaining unit employees of the closing of Commericial's operations and to pay its employees amounts at the rates of their normal wages (not reduced) when last in Commercial's employment from 5 days after the date of this Decison until the occurrence of the earliest of the following conditions: (1) the date Commercial bargains to agreement with the Union on those subjects pertaining to the effects of the closing on bargaining unit employees; (2) a bona fide impasse in bargaining; (3) the failure of the Union to request bargaining within 5 days of this Decision and Order, or to commence negotiations within 5 days of Commercial's notice of its desire to bargain with the Union; or (4) the subsequent failure of the Union to bargain in good faith. In no event shall the sum paid to any of these employees exceed the amount the employee would have earned as wages from July 16, 1982, the last date on which Commercial conducted its business, to the time he secured equivalent employment elsewhere; provided, however, that in no event shall the sum be less than these employees would have earned for a 2-week period at the rate of their normal wages (not reduced) when last in Commercial's employ. Interest on all such sums shall be paid in the manner prescribed above.

Finally, Commercial's unilateral change of its contract, bypassing of the Union, direct dealing with its employees, including threatening them with loss of their jobs and closure of Commercial's business, and refusal to bargain in good faith with the Union are all serious violations indicating Commercial's utter disregard for the Act. I shall, therefore, recommend a broad injunctive order. *Hickmott Foods*, 242 NLRB 1357 (1979).

On the foregoing findings of fact, conclusions of law, and on the entire record, including my observation of the witnesses as they testified, and on my consideration of the briefs filed by General Counsel and Respondents, I issue the following recommended

[8] See also *Certified Building Products*, 208 NLRB 515 (1974).

[9] See generally *Isis Plumbing Co.*, 138 NLRB 716 (1962).

ORDER[10]

The Respondent, Commercial Cartage Corporation, Taylor, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain with Local 299, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, with respect to wages, hours, and other terms and conditions of employment for the following unit which is appropriate for collective bargaining:

> All full-time and regular part-time truck drivers, helpers, dockmen, warehousemen, checkers, powerlift operators, hostlers, and such other employees as may be presently or hereafter represented by the Union, engaged in local pick-up delivery, and assembling of freight within the area located within the jurisdiction of the Local Union, not to exceed a radius of twenty-five (25) miles; but excluding all clerical employees, guards and supervisors as defined in the Act.

(b) Refusing to bargain collectively with the Union with respect to the effects upon its employees of its decision to close its operation.

(c) Failing and refusing to bargain collectively with the Union by refusing to furnish it with information that it requests which is relevant and reasonably necessary to the Union's performance of its duties on behalf of Respondent's employees in the administration of its collective-bargaining agreement.

(d) Failing and refusing to deduct dues from its employees' wages as required by the collective-bargaining agreement between it and the Union, and to remit same to the Union.

(e) Threatening that its facility will close if its employees did not accept a wage reduction.

(f) Threatening its employees that they would be considered voluntary quits if they did not accept a wage reduction.

(g) Bargaining directly with its employees in the collective-bargaining unit described above and bypassing the Union, the designated exclusive collective-bargaining representative of its employees.

(h) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the National Labor Relations Act.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act.

(a) Rescind its unilateral changes of wages, hours, and other terms and conditions of employment—to wit, rescind its reduction of the wages of its employees and its reduction of their vacation and sick pay benefits.

(b) Comply with the terms and conditions of its collective-bargaining agreement with the Union.

(c) Make whole its employees by paying them the remainder of their wages which it illegally reduced on May 17, 1982, with interest in the manner set forth in the section of this Decision entitled "The Remedy."

(d) Make whole its employees by paying those employees who were laid off on July 18, 1982, 2 days after Commercial terminated its operations, normal wages plus interest for the period and in the manner set forth in the section of this Decision entitled "The Remedy."

(e) Upon request, bargain collectively with the Union with respect to the effects on its employees of its decision to terminate its operations and reduce to writing any agreement reached as a result of such bargaining.

(f) Provide to the Union the following information: (1) whether or not Commercial was engaged in its prior business; (2) whether Commercial still had any equipment left with which it performed bargaining unit work and, if so, what equipment; (3) whether Commercial sold, transferred, leased, or removed any of its equipment to any other company or entity and, if so, what equipment was involved and what method of transportation was used and to whom the equipment was transferred; (4) whether the affairs of Commercial have been terminated and whether its assets have been distributed; (5) whether Commercial's business or customers have been transferred to Conjo Leasing, M-Bar Corp., Commercial Cartage Line Haul Division, and/or Inter-City Ltd. and, if so, what customers or businesses are involved; (6) whether Conjo Leasing, M-Bar Corp., Commercial Cartage Line Haul Division, and/or Inter-City Ltd. are performing any of the work or providing any of the services previously engaged in by Commercial's bargaining unit employees and, if so, what work and/or services are involved; (7) whether Eugene B. Straley has any relationship with Conjo Leasing and, if so, what type of relationship is involved; (8) whether Connie Springer has any relationship with Conjo Leasing and, if so, what relationship is involved; and (9) what relationship does Commercial have with Conjo Leasing, M-Bar Corp., Commercial Cartage Line Haul Division, and/or Inter-City Ltd.

(g) Provide to the Union all records indicating any interest or relationship between Commercial and Conjo Leasing, M-Bar Corp., Commercial Cartage Line Haul Division, and/or Inter-City Ltd.

(h) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(i) Mail an exact copy of the attached notice marked "Appendix"[11] to the Union and to all employees who were employed at its former place of business at 23845 Elcourse Road, Taylor, Michigan, on July 16, 1982, at their last known addresses. Copies of said notices, on

[10] If no exceptions are filed as provided in Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[11] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of appeals enforcing an Order of the National Labor Relations Board."

forms provided by the Regional Director for Region 7, after being duly signed by Commercial's authorized representative, shall be mailed immediately upon receipt thereof, as hereinabove directed.

(j) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint against Eugene B. Straley be dismissed in its entirety.

IT IS ALSO FURTHER ORDERED that the complaint be dismissed insofar as it alleges violations of the Act not specifically found herein.